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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re Nathaniel B., a Person Coming
Under the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SANTIAGO B.,

Defendant and Appellant.

B289790

(Los Angeles County
Super. Ct. No. 17CCJP01355)

APPEAL from orders of the Superior Court of Los Angeles
County, Robert S. Draper, Judge. Affirmed.

Robert F. McLaughlin, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

Santiago B. (father) appeals from the juvenile court's jurisdictional and dispositional orders regarding his sons Nathaniel B. (born in Oct. 2011) and Sebastian B. (born in Nov. 2012). Father contends the juvenile court abused its discretion by (1) removing Nathaniel and Sebastian from father's custody, and (2) ordering father to participate in sexual abuse counseling. We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior to the dependency proceedings at issue in this appeal, Nathaniel and Sebastian lived with father, father's wife Juana L., Juana's 12-year-old daughter Destinie S., and father and Juana's infant son Rafael B. Nathaniel and Sebastian had regular overnight visits with their mother, Sylvia S. (mother).

A. Prior Dependency Referral

In May 2017, five-year-old Nathaniel told school personnel that father had hit him in the face with a closed fist. The Los Angeles County Department of Children and Family Services (DCFS) spoke to father and Juana, who admitted that father spanked the boys with an open hand, but denied he ever used a fist or left marks or bruises. DCFS counseled the parents about appropriate discipline and closed the referral as unfounded.

B. Current Referral

In October 2017, Destinie told a friend that father had touched her inappropriately, and she subsequently told a deputy sheriff that father had touched her breasts and vagina approximately five times, most recently about two weeks earlier. Father was arrested.

A children's social worker (CSW) interviewed Destinie, who said the sexual abuse began in mid-2016, shortly after father and Juana were married. She described one occasion when she, father, and her youngest brother were playing hide and seek; when father found Destinie, he placed his hand under her blouse and bra and touched her left breast and vagina. When Destinie moved away and told father to stop, he apologized and told Destinie not to tell anyone. Destinie had recently told her mother about the abuse because she wanted it to stop. Juana immediately confronted father, but when father denied the abuse and father and Juana began arguing, Destinie told Juana she had lied.

On October 26, 2017, DCFS filed a juvenile dependency petition on behalf of Nathaniel and Sebastian, alleging that father's sexual abuse of Destinie placed the boys at risk of harm. The juvenile court found a prima facie case for detaining Nathaniel and Sebastian from father, and ordered the children released to their mother. However, because mother did not have secure housing, it was agreed that they would continue to live with Juana, with father receiving monitored visits three times per week.

C. Physical Abuse Investigation

In November 2017, Nathaniel and Sebastian separately reported that when they misbehaved, father hit them with a belt,

and Juana hit them with a hand, a belt, or a chancla (sandal). Nathaniel said father last hit him “ ‘a few weeks ago,’ ” and that the belt sometimes left red marks. Nathaniel and Sebastian said father and Juana also hit Destinie. Father denied that he or Juana physically disciplined the children. He said he used to spank them with an open hand, but he had not done so in more than a year. He also denied sexually abusing Destinie, calling her a “ ‘fibber.’ ”

Juana admitted hitting the children with an open hand and a shoe, but she denied using a belt. She said father used to hit the children with a belt, but she had asked him to stop a year earlier because he sometimes left marks on them. With regard to the sexual abuse allegations, Juana said that when she confronted father, he denied touching Destinie inappropriately. When Juana asked Destinie about her abuse allegations in father’s presence, Destinie looked down and indicated she had made it up. Juana did not believe father had abused Destinie because Destinie did not appear scared of father, and “[i]f something really did happen [Destinie] would be scared.” Further, Juana said, “ ‘When Destinie first told me of the inappropriate touching by my husband there was no expression in her face, she was not showing any emotion. When she then again told me she had lied about the inappropriate touching after the Department became involved and [father] was out of the home she came to me and even before she started talking she started crying and choking up. I asked her what was wrong and she said that everything was a lie and that she had made this up because she wanted to fit in with her friend Briana. Destinie said that her friend Briana did not get along with her stepmother and all she wanted to do was fit in with her and that is why she

made up this lie. I know it does not make sense . . . but this is what she told me.’” Juana believed Destinie had made up the sexual abuse because if Destinie had been abused, Juana “ ‘would know.’ ” Juana also said she has known Destinie to lie.

Mother reported that she had seen bruises on the children’s shoulders and backs, and she knew Sebastian had once suffered a split lip after father hit him in the face. The children had often told her that father and Juana disciplined them physically, including by hitting them with shoes, most recently about a month earlier. Mother had not reported the abuse because she did not believe DCFS would do anything about it and did not want the children to get in more trouble. At the end of visits, Nathaniel would tell mother he did not want to go back to father’s home, but mother had continued to allow the children to live with father because she did not have stable housing.

Destinie reported that father and Juana hit her, Nathaniel, and Sebastian with a hand, a shoe, or a belt when they did not listen. She said father was no longer living with the family “ ‘[b]ecause I told a huge lie, that he touched me inappropriately, but he didn’t. I told this to my friend from school. The reason I said this was because I saw my friend not getting along with her step-mother and I wanted to fit in with her.’ ” Destinie said she repeated the lie to the police because she was scared.

D. Forensic Evaluation

A forensic evaluator interviewed Destinie in late January 2017. Destinie told the evaluator father had not sexually abused her; she felt sad when she saw father inside a police car; and she made the false allegations because she “ ‘wasn’t thinking what would happen.’ ” Now, she said, “ ‘I have everyone in my family blaming me (e.g., Aunt Gina said “Why did I tell this lie? Why

did I mess up my family?’” She said she ultimately told the truth because “‘I could not hold it in any longer.’” The evaluator said she had “significant concerns” about Destinie’s recantation “[because] Destinie’s initial statement to her friend, assistant principal, law enforcement, ER CSW . . . [and the] evaluator included very specific details and were consistent with each other.” Further, the evaluator said, “when asked about the reason for having made the allegations if they were indeed false, Destinie stated that she did not know what was going to happen and that she was not thinking. However, when asked what happened when she made a disclosure of sexual abuse by [a] male cousin, she stated that her mother ‘called children services.’ Therefore, it is safe to assume that she expected her mother to do the same. Instead, [Juana] did not believe her and failed to call the authorities. Nevertheless, she continued to maintain that [father] had touched her inappropriately and it wasn’t until two to three weeks after her initial disclosure that she recanted her allegations.”

E. Third Amended Petition; Children Placed With Mother

DCFS filed the operative third amended petition on January 26, 2018. It alleged jurisdiction over Nathaniel and Sebastian pursuant to Welfare and Institutions Code¹ section 300, subdivisions (a), (b), (d), and (g), as follows:

(1) Father physically abused Nathaniel and Sebastian by striking them with a belt, placing them at risk of physical and emotional harm, and mother failed to protect the children from father’s physical abuse (a-1, b-2).

¹ All undesignated statutory references are to the Welfare and Institutions Code.

(2) Juana physically abused Nathaniel and Sebastian by striking them with a belt and shoe, placing them at risk of physical and emotional harm, and mother and father failed to protect the children from Juana's physical abuse (a-2, b-3).

(3) Father sexually abused Destinie, placing Nathaniel and Sebastian at risk of harm (b-1, d-1).

(4) Mother has failed to provide the children with the necessities of life and is not able to secure appropriate housing for the children (b-4, g-1).

On January 30, 2018, DCFS filed a section 385 request asking the court to remove the children from mother's custody because the children could no longer live with Juana, and mother did not have housing. The following day, however, DCFS advised the court that mother was living with the maternal grandmother; the court therefore denied the section 385 request and ordered the children placed with mother in maternal grandmother's home.

F. Contested Jurisdiction/Disposition Hearing

Following a contested hearing on March 19 and 20, 2018, the juvenile court sustained the physical abuse allegations (a-1, a-2, b-2, b-3), but dismissed the allegations of sexual abuse (b-1, d-1) and failure to support (b-4, g-1). The court explained that there was substantial credible evidence that Nathaniel and Sebastian had been physically abused by both father and Juana; and although Destinie had not credibly recanted her sexual abuse allegation, the court found no evidence that Nathaniel and Sebastian were at risk of sexual abuse by father.

As to disposition, the court removed the children from father and placed them with mother under DCFS supervision. It further ordered that mother be provided family preservation

services and participate in a parenting class; and that father have regular monitored visits with the children and participate in individual and sexual abuse counseling.

Father timely appealed from the juvenile court's March 20, 2018 jurisdictional and dispositional findings and orders.

DISCUSSION

Father challenges only the dispositional order.² Specifically, father contends that the trial court abused its discretion by (1) ordering the children removed from his physical custody, and (2) requiring him to participate in sexual abuse counseling.

I.

Substantial Evidence Supported the Juvenile Court's Removal Order

Section 361, subdivision (c)(1) provides that a dependent child may be removed from a parent's physical custody if it finds clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from [his parent's] physical custody."

On appeal, "[w]e review the entire record to determine whether the trial court's jurisdictional and dispositional findings are supported by substantial evidence. Substantial evidence is

² Father does not assert error as to the juvenile court's jurisdictional findings, and thus any claims of error are forfeited. (E.g., *Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 293 [appellate review " " "is limited to issues which have been adequately raised and supported in [appellant's opening] brief." ' '"].)

evidence that is reasonable in nature, credible, and of solid value. We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. We draw all legitimate and reasonable inferences in support of the judgment. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)” (*In re D.B.* (2018) 26 Cal.App.5th 320, 328–329.)

The record in the present case contains substantial evidence that Nathaniel and Sebastian could not safely remain in father’s care. As we have said, Nathaniel and Sebastian, who were six and five years old, reported that when they misbehaved, father and Juana regularly hit them with objects, leaving red marks on the children’s bodies. Destinie confirmed the boys’ reports, telling DCFS that father and Juana hit her, Nathaniel, and Sebastian with a hand, a shoe, or a belt when the children did not listen. Mother made similar statements, saying that the children reported that father and Juana hit them with their hands and shoes. Hitting Nathaniel and Sebastian forcefully with objects—even if done with a genuinely disciplinary purpose—was excessive in view of their young ages, and it placed the children at risk of harm.

Father contends that the juvenile court erred in removing the children from his custody because he never inflicted “ ‘severe’ ” physical abuse on them. “Severe physical harm” is not the standard, however. To the contrary, “ ‘ “[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on *averting harm* to the child.” [Citation.]’ ” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247, *italics added.*) Thus, because

substantial evidence supports the trial court's finding that father created a substantial risk of harm to the children's health and safety, the trial court properly removed the children from father's custody.

Father next contends that even if he and Juana had employed excessive physical punishment in the past, they had "changed their ways" after DCFS intervened in May 2017, and thus the children were not at risk of future harm. Substantial evidence supported the juvenile court's contrary conclusion. Although father and Juana told DCFS they had stopped hitting the children with objects after DCFS became involved, there was evidence to the contrary—namely, Nathaniel's and mother's statement that the boys had been hit as recently as October or November 2017, nearly six months *after* DCFS's initial involvement with the family.

Father contends finally that there were reasonable means by which the children could have been protected without removing them from his custody, including by providing in-home counseling, supervision, and unannounced visits. The juvenile court was not required to so conclude. Instead, the fact that father continued to hit the children with objects even *after* DCFS counseled him in May 2017 about "proper and appropriate discipline methods" suggests that further in-home counseling would not have been effective.

The cases on which father relies are distinguishable. In *In re Hailey T.* (2012) 212 Cal.App.4th 139 (*Hailey T.*) and *In re A.E.* (2014) 228 Cal.App.4th 820, the parents were alleged to have engaged in isolated acts of physical violence that the courts found were unlikely to reoccur: In *Hailey T.* because the child at issue had never been the target of physical violence (*Hailey T.*, at

p. 147), and in *A.E.* because the parent “expressed remorse and [was] committed to learning better discipline methods” (*In re A.E.*, at p. 826). In the present case, in contrast, father had repeatedly used excessive physical discipline with three of his children, did not express remorse, and did not express openness to learning alternative forms of discipline. Accordingly, *Hailey T.* and *In re A.E.* do not guide our disposition.

II.

The Juvenile Court Did Not Abuse Its Discretion by Requiring Father to Participate in Sexual Abuse Counseling

Father contends the juvenile court abused its discretion by ordering father to engage in sexual abuse counseling. We do not agree.

First, father urges that because Destinie recanted her report of sexual abuse, there was “no competent evidence father ever sexually abused Destinie—or any other child.” Not so. The record before the juvenile court included the report of forensic evaluator Yanel Melchor, LCSW, who noted that she had “significant concerns” about Destinie’s recantation. She noted two significant factors. First, Destinie’s initial reports of sexual abuse were detailed and consistent with one another, and Melchor believed that the reasons Destinie gave for falsely reporting sexual abuse were not persuasive. Second, Melchor noted that the scientific literature suggests the rates of false reports of sexual abuse are low, and rates of recantation are high, particularly when the abuser is a parent figure, the non-offending caregiver is unsupportive or disbelieving, and the child remains in the home with the non-offending caregiver. In the present case, Melchor said, father was a parental figure, Juana did not

believe Destinie's report, and Destinie remained in Juana's home, and thus Destinie's recantation was not surprising. Melchor's report, thus, was substantial evidence that father sexually abused Destinie.

Father also urges that because the juvenile court dismissed the sexual abuse allegations, it erred in ordering him to participate in sexual abuse counseling. We do not agree. At the dispositional hearing, "[t]he court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)" (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Thus, a dispositional order may include elements to correct parental deficiencies that may impede the parent's ability to reunify with the child, even if those deficiencies are not part of the sustained dependency petition. (*Id.* at p. 1008.)

In the present case, because there was substantial evidence that father sexually abused Destinie, the court was well within its discretion in including sexual abuse counseling in father's reunification plan. (See *ibid.* at p. 1008 [given father's repeated driving under the influence convictions and positive blood test for methamphetamine, "the court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for [his child]. The court reasonably concluded [father's] substance abuse was an obstacle to reunification that had to be addressed in the reunification plan."].)

DISPOSITION

The jurisdictional and dispositional findings and orders are affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.